

Clearinghouse Rule 07-074

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 19.05 (title), 19.27 (4) (a) 2. a., 20.14 (intro.), (1), (2), (6), (7) (a) and (8) Note and 20.39 and create NR 19.001 (8g) and (8r), 19.05 (3), 19.055, 19.056, 19.057, 19.275 (3) (i), 20.03 (19g) and (19r) and 20.08 (6) and (7) relating to control of fish diseases and invasive species.

FH-30-07

Analysis Prepared by the Department of Natural Resources

- 1. Statutes interpreted:** Sections 23.09 (2) (intro), 23.22 (2) (a), 29.014 (1), 29.039 (1), 29.041 and 227.11 (2) (a), Stats.
- 2. Statutory Authority:** Sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 27.01 (2) (j), 29.014 (1), 29.041, 29.039 (1), 29.509 (4) and (5) and 227.11 (2) (a), Stats.
- 3. Explanation of agency authority to promulgate the rules under the statutory authority:** Section 23.09 (2) (intro), Stats., grants the department general authority to adopt rules for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state. Section 23.091, Stats., authorizes the department to acquire, develop, operate and maintain state recreation areas, to establish use zones within state recreation areas providing for the full range of recreational uses, including hunting and fishing, and to promulgate rules to control uses within zones and limit the number of persons using any zone.

Section 23.11 (1), Stats., gives the department the authority to have and take the general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, along with such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by ch. 23, Stats., and by other provisions of law. Section 23.22 (2) (a) and (b) 6., Stats., confer on the department the authority to establish a statewide program to control invasive species in this state, including rules to classify invasive species for purposes of the program. Section 27.01 (2) (j), Stats., grants the department authority to promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Sections 29.014 (1) and 29.041, Stats., grant rule making authority to the department to establish and maintain open and closed seasons for fish and any bag limits, size limits, rest days and conditions governing the taking of fish that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, and provide that the department may regulate fishing on and in all interstate boundary waters and outlying waters. Section 29.039 (1), Stats., authorizes the department to develop conservation programs to ensure the perpetuation of nongame species, require harvest information and establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species.

Section 29.509 (4) and (5), Stats., require bait dealers to keep records as required by the department and authorize the department to issue permits for the taking of bait from specified waters and to restrict the

number of permits that may be issued for any designated body of water. Section 27.01 (2) (j), Stats., grants the department authority to promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths.

Finally, s. 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statute or rule: None.

5. Plain language analysis of the proposed rule: The Order makes permanent and clarifies the emergency measures put into effect April 8, 2007 by Order No. FH-22-07(E), May 2, 2007 by Order No. FH-25-07(E) and May 27, 2007 by Order No. FH-28-07(E) for the control and prevention of Viral Hemorrhagic Septicemia (VHS) in fish in waters of the state.

SECTION 1 of this Order creates definitions of “live fish” and “live fish eggs” for purposes of the rule created by SECTION 3 that prohibits the transport of live fish and live fish eggs taken from or possessed on any outlying water and certain inland waters or their bank or shore.

SECTION 2 revises the title of s. NR 19.05.

SECTION 3 adds a new subsection (3) to s. NR 19.05, prohibiting live fish or fish eggs that were taken from or possessed on the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected waters upstream to the first fish barrier, or from the bank or shore of any of those waters, from being transported away from that water, bank or shore, with 3 exceptions: live fish or fish eggs transported out of state in compliance with the United States Department of Agriculture Animal and Plant Health Inspection Service’s regulations and orders; live fish or fish eggs that tested free of Viral Hemorrhagic Septicemia (VHS) virus using DATCP-approved methods; and live fish or fish eggs transported with the prior written approval of the department, where the department has determined that VHS virus will not be transported to other waters. In addition, if the department formally determines that any other water body is infected with Viral Hemorrhagic Septicemia virus, SECTION 3 makes this conditional prohibition on the transport of live fish apply to all waters of Wisconsin. The live fish transportation ban only applies to transport away from the water or its bank or shore, not on the water.

SECTION 4 of the Order creates a new rule in ch. NR 19 that requires any person who removes a boat, boat trailer, boating equipment or fishing equipment from the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected waters upstream to the first fish barrier, or from the bank or shore of any of those waters, to immediately drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container, unless it has been exempted in writing by the department after determining that it will not allow VHS virus to be transported to other waters. In addition, if the department formally determines that any other water body is infected with Viral Hemorrhagic Septicemia virus, SECTION 4 makes the immediate drainage requirement apply to all waters of Wisconsin. The drainage requirement also applies to containers and fishing equipment used by bank or shore anglers. Finally, it exempts tanks or containers of potable drinking water and other beverages intended for human consumption.

SECTION 5 of the Order establishes a procedure for the department to formally notify the public if it determines that any water body other than the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected water upstream to the first fish barrier, is infected with Viral Hemorrhagic Septicemia virus, based on test results or other empirical evidence that the virus is present. Public notice must be given by issuing a press release, by publication of a notice in the official state newspaper, and by any other means that is reasonably likely to inform the public. Following such a determination and public notice, the provisions of s. NR 19.03 (3) restricting the transport of live fish and eggs from these waters, and of s. NR 19.056 requiring immediate drainage of boats, boat trailers, boating equipment and fishing equipment upon removal from the water, bank or shore of these waters, thereafter apply state-wide to all waters.

SECTION 6 of the Order requires that bait dealers apply for and possess a department permit in order to harvest wild bait from any water, that they keep records of their harvest and of its disposition, except for retail sales to consumers, and that they not possess farm-raised fish while transporting wild harvested minnows, crayfish or frogs back to their business or to the point of sale.

SECTION 7 of the Order eliminates the current requirement that only fish or fish parts and meal may be used as bait for trapping crayfish. It then adds a requirement that if fish (or fish parts) are used as crayfish bait, they must come from the same water where they will be used as bait, except with written approval of the department.

SECTION 8 of the Order bans the use of fish (and fish parts) as bait to trap turtles unless the fish came from the same body of water where they will be used as bait, or with written approval of the department.

SECTION 9 of this Order creates definitions of “live fish” and “live fish eggs” for purposes of the rules created by SECTION 10 that restrict the use of improperly imported live bait and the use of dead bait that has not been preserved by a means that will kill the VHS virus.

SECTION 10 of the Order bans the use or possession of imported live bait (minnows, crayfish and frogs) except bait imported in compliance with DATCP’s import and health requirements in ch. ATCP 10, Wis. Adm. Code, and live bait from Iowa or Minnesota used or possessed on boundary waters with those states (the Mississippi River “between the tracks”, Lake St. Croix, and the St. Croix river and the St. Louis river as defined in s. NR 21.02 (16)). It also prohibits any person from possessing or using dead fish, dead fish eggs, dead crayfish, dead frogs, or any parts thereof as bait, with 3 exceptions: dead fish, dead fish eggs, dead crayfish, dead frogs, or any parts thereof may be used as bait on Lake Michigan, Green Bay and their tributaries upstream to the first dam or other obstruction impassible to fish; they may be used on the same water body from which they were obtained; and they may be used on any waters of the state if they have been preserved by means other than refrigeration or freezing. The rules also allow dead minnows to still be used as bait, as if they were alive, if certain conditions are met, even though the dead minnows are not preserved by any particular method.

SECTION 11 adds a provision to the current rule governing minnow collection, reiterating the requirement that a bait dealer must obtain the wild bait harvest permit created by SECTION 6 of this Order; describes the permit issued under s. NR 20.39 as a “non-standard gear permit” to distinguish it from the wild harvest permit; and corrects the wording of the Note to NR 20.14 regarding transport of live minnows as affected by this Order. The current note incorrectly states that transportation of minnows is permitted throughout the state.

SECTION 12 of the Order adds a new criterion for the issuance of permits that allow licensed bait dealers to use non-standard minnow gear. The new rule stipulates that such permits may be denied if the

department determines that use of the non-standard gear (minnow seines, minnow dip nets or minnow traps) is likely to result in the spread of invasive species or diseases. SECTION 12 also adds a Note to NR 20.39 regarding the need for a wild harvest permit issued under rules created by SECTION 6 of this Order.

6. Summary of and preliminary comparison with any existing or proposed federal regulation: In late 2006 the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA APHIS) issued an emergency order limiting the movement of live fish from Ontario or Quebec into the United States and limiting the interstate movement of live fish. That order does not apply to fish moved within the boundaries of individual states, and there are no known or proposed federal regulations that would do so.

7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan): Among adjacent states, only Michigan has adopted regulations addressing the VHS problem. The Michigan Department of Natural Resources has enacted regulations that will go into effect on June 28, 2007 that are intended to minimize the spread of VHS in that state. Their waters are classified based on the actual or likely presence of VHS and then regulate live fish movement and bait harvest and use depending on the classification. Steps have also been taken elsewhere, particularly in the lower Great Lakes where the Great Lakes form of the VHS virus was first discovered.

In November of 2006 the New York State Department of Environmental Conservation announced emergency regulations prohibiting the commercial collection of bait fish from waters of the state where VHS has been detected, limiting the use of bait fish to the specific water from which they were collected, and prohibiting the placement of live fish into the waters of the State (including possessing, importing, and transporting live fish for purposes of placing them into the waters of the State) unless accompanied by a fish health inspection report issued within the previous 12 months.

In January the Pennsylvania Fish and Boat Commission placed a temporary ban on the transportation of live fish from Lake Erie and its tributaries to inland waters, and permanent rule changes are expected. Other jurisdictions are also developing regulations.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the rule: The World Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On April 4, 2007 the Natural Resources Board adopted Order FH-22-07(E) to control the spread of Viral Hemorrhagic Septicemia (VHS) virus in Wisconsin. Provisions of that rule were clarified and expanded in NRB Order FH-25-07(E), adopted on April 25, 2007. At the time those rules were adopted, VHS virus had caused fish kills in the lower Great Lakes, but had not been documented west of Lake Huron. Department biologists believed it was probably already in Lake Michigan, and possibly in Lake Superior and the Mississippi River. We now believe that the virus is more wide spread than had previously been believed.

On May 11, the University of Wisconsin Veterinary Diagnostic Lab informed the department that samples of freshwater drum taken from Little Lake Butte des Morts had tested positive for the VHS virus. For purposes of controlling the spread of the disease, it is now reasonable to regard Lake Winnebago and the majority of the Fox/Wolf River system as infected, and prudent to assume that the virus may appear in any inland water.

The Aquatic Animal Health Code of the OIE provides specific guidance regarding the management of VHS. The rules proposed in this Order are consistent with that code. USDA APHIS has adopted

emergency regulations to limit the transfer of VHS virus among states or into the United States from Ontario or Quebec. The rules proposed in this Order expand those protections by reducing the risk of spread of the virus from infected to uninfected waters.

9. Any analysis and supporting documentation that the agency used to determine in the rule's effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report: We know that small businesses related to boating and recreational fishing, commercial fishing, wholesale fish dealing, crayfish trapping, turtle trapping and bait harvesting, importation, culture, or sale may be affected by the rule. However, we currently have no basis for quantifying the economic impacts of the rule.

10. Effect on small business, including how the rule will be enforced: The most significant economic impact of the rule will be on businesses involved in bait harvest, importation, culture, or sale. Businesses handling bait harvested in VHS-affected areas will be adversely affected, while those involved in culturing bait may benefit. The rule will also make it harder for some crayfish trappers to obtain fish for use as bait in their traps, but allows other types of bait to be used in lieu of fish. Similarly, the rule will make it harder for some turtle trappers to obtain fish for use as bait, but current rules already allow the use of other types of bait. The rule will be enforced by department conservation wardens, county district attorneys, and county circuit courts through the use of citations and civil or criminal complaints under the provisions of ch. 29, Stats.

11. Agency contact person:

William Horns – FH/4
Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921
phone: (608) 266-8782
email: william.horns@wisconsin.gov

12. Place where comments are to be submitted and deadline for submission: The deadline for written comments in August 23, 2007. Comments may be submitted to Mr. Horns or they may also be electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>

SECTION 1. NR 19.001 (8g) and (8r) are created to read:

NR 19.001 (8g) "Live fish" means, for purposes of this chapter, any fish possessed by a person that is handled or treated in a manner that will keep it alive, such as keeping it in water, or that is revived by placement back into water. "Live fish" includes any minnow possessed by a person for use as bait and that dies while the person is fishing, but only until it is transported away from the body of water on or along which it died.

(8r) "Live fish eggs" means, for purposes of this chapter, fertilized or unfertilized fish eggs that are handled or treated in a manner likely to keep them alive or viable for the purpose of propagation.

SECTION 2. NR 19.05 (Title) is amended to read:

NR 19.05 Release, ~~and~~ importation and transportation of fish.

SECTION 3. NR 19.05 (3) is created to read:

NR 19.05 (3) No person may transport live fish or live fish eggs away from any of the following waters or their banks or shores if the fish or fish eggs were taken from the following waters or possessed on any of these waters or their bank or shore: Lake Michigan, Green Bay, Lake Superior, the Mississippi River, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, any bay, slough or backwater of these waters, or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish; or, if the department determines under s. NR 19.056 that any other water is infected with Viral Hemorrhagic Septicemia virus, any inland or outlying water, except:

- (a) Live fish or live fish eggs being transported out of state in compliance with the United States Department of Agriculture Animal and Plant Health Inspection Service's regulations and orders.
- (b) Live fish or live fish eggs that have been tested for Viral Hemorrhagic Septicemia using methods approved by the department of agriculture, trade and consumer protection and that were found to be free of the Viral Hemorrhagic Septicemia virus.
- (c) Live fish or live fish eggs being transported with the prior written approval of the department, where the department has determined that the proposed activity will not allow Viral Hemorrhagic Septicemia virus to be transported to other waters.

SECTION 4. NR 19.055 is created to read:

NR 19.055 Drainage of water from boats and equipment required. (1) Except as provided in subs. (2) and (3), any person who removes a boat, boat trailer, boating equipment or fishing equipment from the water, bank or shore of Lake Michigan, Green Bay, Lake Superior, the Mississippi River, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, or any bay, slough or backwater of these waters, or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish; or, if the department determines under s. NR 19.056 that any other water is infected with Viral Hemorrhagic Septicemia virus, from the water, bank or shore of any inland or outlying water, shall drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container immediately after removing the boat, boat trailer, boating equipment or fishing equipment from the water, bank or shore.

(2) The department may exempt any boat, boat trailer, boating equipment or fishing equipment in writing from the requirements of sub. (1) if it determines that it will not allow Viral Hemorrhagic Septicemia virus to be transported to other waters.

(3) Subsection (1) does not apply to tanks or containers of potable drinking water or other beverages meant for human consumption.

SECTION 5. NR 19.056 is created to read:

NR 19.056 Determination of waters infected with Viral Hemorrhagic Septicemia virus. If, based on test results or other empirical evidence, the department determines that the Viral Hemorrhagic Septicemia virus is present in any water body other than Lake Michigan, Green Bay, Lake Superior, the Mississippi River, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, or any bay, slough or backwater of these waters, or any water connected to these waters, upstream to the first dam or other obstruction impassible to fish, the department shall notify the public that s. NR 19.05 (3) relating to the transport of live fish and live fish eggs and s. NR 19.055 relating to drainage of all water from boats, boat trailers, boating equipment or fishing equipment apply thereafter to all inland and outlying waters. The notice shall be given by issuing a press release, by publication in the official state newspaper, and by such other means as the department determines are reasonably likely to inform the public.

SECTION 6. NR 19.057 is created to read:

NR 19.057 Bait dealer's wild harvest permit required; records required. (1) No bait dealer may take minnows, crayfish or frogs for use as bait from any inland or outlying water without a wild harvest permit issued by the department under this section. A bait dealer shall apply for a permit on forms available from the department. The department shall issue a permit within 10 business days after receipt of a complete application. Permits shall be valid for the dates specified on the permit, not to exceed 14 days and shall require compliance with all minnow collecting restrictions. A complete application shall include the applicant's name, street address, bait dealer's license number if any, the specific water body where bait will be harvested, the town, range and section where bait will be harvested, the species of bait that will be harvested, the maximum quantity of bait expected to be harvested, proof that the applicant is allowed under s. NR 19.05 (3) (a), (b) or (c) to lawfully transport live fish or live fish eggs, and any other information required on the application form.

Note: See s. NR 20.14 for minnow collecting restrictions.

(2) Each permit holder shall maintain a clear, legible daily record in the English language on forms available from the department of all minnows, crayfish or frogs harvested from any inland or outlying water. The record shall include the water body of origin, the town, range and section where harvested, the species harvested, the date of harvest, the quantity or volume harvested, the disposition, except that retail sales to consumers need not be recorded, and any other information required on the record form.

(3) No bait dealer may possess farm-raised fish while engaged in the harvest of wild bait, or while transporting wild harvested bait from the water where it was harvested to the bait dealer's business location or from the water where it was harvested to the point of sale.

SECTION 7. NR 19.27 (4) (a) 2. a.. is amended to read:

NR 19.27 (4) (a) 2. a. Crayfish may not be taken with use of bait consisting ~~only~~ of fish, including parts of fish lawfully taken, or fish by-products including fish meal or prepared parts of such fish except in the same body of water from which the fish was obtained, or with written approval of the department.

SECTION 8. NR 19.275 (3) (i) is created to read:

NR 19.275 (3) (i) Use fish, including parts of fish as bait, except that fish and fish parts may be used as bait in the same body of water from which the fish was obtained, or with written approval of the department.

SECTION 9. NR 20.03 (19g) and (19r) are created to read:

NR 20.03 (19g) "Live fish" means, for purposes of s. NR 20.08, any fish possessed by a person that is handled or treated in a manner that will keep it alive, such as keeping it in water, or that is revived later by placement back into water. "Live fish" includes any minnow possessed by a person for use as bait and that dies while the person is fishing, but only until it is transported away from the body of water on or along which it died.

(19r) "Live fish eggs" means, for purposes of s. NR 20.08, fertilized or unfertilized fish eggs that are handled or treated in a manner likely to keep them alive or viable for the purpose of propagation.

SECTION 10. NR 20.08 (6) and (7) are created to read:

NR 20.08 (6) Use or possess live fish, live fish eggs, live crayfish or live frogs as bait if obtained outside of, or brought into, the state of Wisconsin, except for the following:

(a) Live fish, live fish eggs, live crayfish or live frogs imported in compliance with the department of agriculture, trade and consumer protection's import and health requirements in ch. ATCP 10.

(b) Live fish, live fish eggs, live crayfish or live frogs obtained in Minnesota or Iowa and used in or on waters of the Mississippi River lying between the Chicago, Milwaukee, St. Paul and Pacific railroad tracks on the Iowa or Minnesota side of the river, and the Burlington Northern and Santa Fe railroad tracks lying on the Wisconsin side of the river, including all sloughs and backwaters, bays and newly

extended water areas connected with the main channel of the Mississippi River by a channel which is navigable when the waters are approximately equal to the normal pool elevation as created by the U.S. army corps of engineers and in the waters of Lake St. Croix, and the St. Croix River and the St. Louis River as defined in s. NR 21.02 (16).

Note: Section ATCP 10.62 (1) prohibits the importation into Wisconsin of live fish or live fish eggs for use as bait and s. ATCP 10.07 (2) prohibits the importation into Wisconsin of live crayfish or live frogs without a written import permit from the department of agriculture, trade and consumer protection.

(7) Possess for use as bait, or use as bait any dead fish, dead fish egg, dead crayfish, or dead frog or any part of any dead fish, dead fish egg, dead crayfish, or dead frog unless at least one of the following applies:

(a) It is being possessed or used on Lake Michigan, Green Bay or any waters connected to these waters upstream to the first dam or other obstruction impassible to fish.

(b) It is being possessed or used on the same water body from which it was obtained, or on any water connected to that water body that is not separated by a dam or other barrier impassible to fish.

(c) It has been preserved by means other than refrigeration or freezing.

(d) It is a minnow that is a "live fish" as defined in s. NR 20.03 (19g) and was obtained and possessed lawfully from waters of the state or it was imported in compliance with sub. (6) (a) or (b).

Note: Methods of preservation other than refrigeration or freezing include but are not limited to salting, brining or treatment with other preservatives to prevent or inhibit decay or spoiling.

SECTION 11. NR 20.14 (intro.), (1), (2), (6), (7) (a) and (8) Note are amended to read:

NR 20.14 Minnow collecting restrictions. No bait dealer may take minnows, crayfish or frogs for use as bait from any inland or outlying water without a wild harvest permit from the department under s. NR 19.057. ~~No~~ In addition, no person may do any of the following:

(1) Set, use or operate any net, trap or similar device for the taking of minnows other than minnow seines, minnow dip nets and minnow traps as authorized in s. NR 20.20 unless issued a non-standard gear permit by the department under s. NR 20.39 pursuant to s. 29.516 (1), Stats.

(2) Set, use or operate any minnow seine, minnow dip net, minnow trap or similar device for the taking of minnows in any water unless specifically authorized in s. NR 20.20 or 20.39. Minnow seines or minnow dip nets of any type or description may not be set, used or operated in any trout stream unless a non-standard gear permit is issued by the department under s. NR 20.39.

(6) Set, use or operate minnow traps in trout streams during the closed season for trout unless issued a non-standard gear permit by the department under s. NR 20.39. The permit authorizing

placement of minnow traps in trout streams during the closed season for trout shall specify conditions on raising the traps and removing minnows.

(7) Set, use or operate more than 3 minnow traps in trout streams during the open season for trout except licensed bait dealers.

(a) No more than a total of 20 minnow traps may be set, used or operated by licensed bait dealers during the open season for trout when removing minnows from one or more trout streams unless issued a non-standard gear permit by the department under s. NR 20.39.

(8) ~~Note: The possession and transportation of legally taken minnows is permitted throughout the state.~~ With certain exceptions, s. NR 19.03 (3) prohibits the transportation of live fish and live fish eggs, including minnows, from Lake Michigan, Green Bay, Lake Superior, the Mississippi River, Lake Winnebago, the Fox River from Lake Winnebago to Green Bay, any bay, slough or backwater of these waters, and any water connected to these waters upstream to the first dam or other obstruction impassible to fish. However, if the department determines under s. NR 19.056 that any other water is infected with Viral Hemorrhagic Septicemia virus, s. NR 19.03 (3) thereafter prohibits the transportation of live fish and live fish eggs, including minnows, from all inland and outlying waters, with certain exceptions.

SECTION 12. NR 20.39 is amended to read:

NR 20.39 Permits for use of nonstandard minnow gear on inland waters. (1) The department may issue a permit to a licensed bait dealer for the taking of minnows with minnow seines, minnow dip nets or minnow traps which are otherwise prohibited by s. NR 20.14. Applications shall be submitted on forms available from the department to the regional office having jurisdiction over the affected waters.

(a) The department shall issue the permit if it determines that all of the conditions of this paragraph are met.

1. For waters with adequate public access according to s. NR 1.90 (2) (a), the department shall determine if:

- a. The department does not need the minnows for its fish management activities;
- b. Removal of the minnows will not cause or substantially contribute to a long-term depletion of the forage base;
- c. Threatened or endangered species listed in ch. NR 27 are not known to be present in or near the affected water;
- d. Unique or sensitive biological values such as nesting loons or heron rookeries are not present in, on or near the affected water.

e. The use of the minnow seines, minnow dip nets or minnow traps is not likely to hinder or interfere with the exercise of a permit issued earlier in the year to another person for the water;

f. The use of the minnow seines, minnow dip nets or minnow traps is not likely to hinder or interfere with any other public uses of the water.

g. The use of the minnow seines, minnow dip nets or minnow traps is not likely to result in the spread of invasive species or diseases.

2. For waters lacking adequate public access and for waters surrounded by private lands, the department shall determine if:

a. The requirements of subd. 1. a. to e. and g. are met; and

b. The applicant provided the department with the name, mailing address and telephone number of the person granting the applicant legal access to the water.

Note: Under s. NR 19.057, a bait dealer must have a wild harvest permit from the department to take wild minnows, crayfish or frogs for use as bait.

SECTION 13. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

SECTION 14. BOARD ADOPTION. The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)